

Section 86-1.31 Termination of service. The Division of Health Care Financing in the Department of Health shall be notified immediately of the deletion of any previously offered service or of the withholding of services from patients paid for by government agencies. Such notification shall include a statement indicating the date of the deletion or the withholding of such service and the cost impact on the medical facility of such action. Any overpayments by reason of such deletion of previously offered service shall bear interest and be subject to penalties both in the manner provided in section 86-1.8(f) of this Subpart.

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Section 86-1.32 Sales, leases and realty transactions. (a) If a medical facility is sold or leased or is the subject of any other realty transaction before a rate for the facility has been determined and certified by the Commissioner of Health, the capital cost component of such rate shall be determined in accordance with the provisions of sections 86-1.23, 86-1.24, 86-1.29 and 86-1.30 of this Subpart.

(b) If a medical facility is sold or leased or is the subject of any other realty transaction after a rate for the facility has been determined and certified by the commissioner, the capital cost component of such rate shall be considered to be continuing with the same force and effect as though such sale, lease or other realty transaction had not occurred. This subdivision shall not be construed as limiting the powers and rights of the commissioner to change rate computations generally under section 86-1.30 of this Subpart, or specifically when based upon previous error, deceit or any other misrepresentation or misstatement that has led the commissioner to determine and certify a rate which he would otherwise not have determined or certified. Further, this subdivision shall not be construed as limiting the powers and rights of the commissioner to reduce rates when one or more of the original property right aspects related to such a facility is terminated.

(c) If a facility enters into a sale and leaseback agreement with a nonrelated purchaser involving plant facilities or equipment prior to October 23, 1992, the incurred rental specified in the agreement is includable in allowable costs¹ if the following conditions are met:

¹ Included in rates of payment effective on and after October 23, 1993.

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[(i)](1) the rental charges are reasonable based on consideration of rental charges of comparable equipment and market conditions in the area; the type, expected life, condition and value of the equipment rented and other provisions of the rental agreements;

[(ii)](2) adequate alternate equipment which would serve the purpose are not or were not available at lower cost; and

[(iii)](3) the leasing was based on economic and technical considerations.

[(iv)](4) If all of these conditions are not met, the allowable rental cost shall not exceed the amount which the provider would have included in reimbursable costs had he retained legal title to the equipment, such as interest, taxes, depreciation, insurance and maintenance costs.

[(v)](5) If a facility enters into a sale and leaseback agreement with a nonrelated purchaser involving land, the incurred rental for the cost of land is not includable in allowable costs.

(d) An arms length lease purchase agreement with a nonrelated lessor involving plant facilities or equipment entered into on or after October 23, 1992 which meets any one of the four following conditions, establishes the lease as a virtual purchase.

(1) The lease transfers title of the facilities or equipment to the lessee during the lease term.

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Part I(2) The lease contains a bargain purchase option.(3) The lease term is at least 75 percent of the useful life of the facilities or equipment. This provision is not applicable if the lease begins in the last 25 percent of the useful life of the facilities or equipment.(4) The present value of the minimum lease payments (payments to be made during the lease term including bargain purchase option, guaranteed residual value and penalties for failure to renew) equals at least 90 percent of the fair market value of the leased property. This provision is not applicable if the lease begins in the last 25 percent of the useful life of the facilities or equipment. Present value is computed using the lessee's incremental borrowing rate, unless the interest rate implicit in the lease is known and is less than the lessee's incremental borrowing rate, in which case the interest rate implicit in the lease is used.(e) If a lease is established as a virtual purchase under subdivision (d) of this section, the rental charge is includable in capital-related costs² to the extent that it does not exceed the amount that the provider would have included in capital-related costs if it had legal title to the asset (the cost of ownership). The cost of ownership shall be limited to depreciation and interest. Further, the amounts to be included in capital-related costs are determined as follows:(1) The difference between the amount of rent paid and the amount of rent allowed as capital-related costs is considered a deferred charge and is capitalized as part of the historical cost of the asset when the asset is purchased.

² Included in rates of payment effective on and after October 23, 1994.

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(2) If an asset is returned to the owner instead of being purchased, the deferred charge may be included in capital-related costs in the year the asset is returned.

(3) If the term of the lease is extended for an additional period of time at a reduced lease cost and the option to purchase still exists, the deferred charge may be included in capital-related costs to the extent of increasing the reduced rental an amount not in excess of the cost of ownership.

(4) If the term of the lease is extended for an additional period of time at a reduced lease cost and the option to purchase no longer exists, the deferred charge may be included in capital-related costs to the extent of increasing the reduced rental to a fair rental value.

(5) If the lessee becomes the owner of the leased asset (either by operation of the lease or by other means), the amount considered as depreciation for the purpose of having computed the limitation on rental charges under subdivision (e) of this section, must be used in calculating the limitation on adjustments for the purpose of determining any gain or loss upon disposal of an asset.

(6) In the aggregate, the amount of rental or lease costs included in capital-related costs may not exceed the amount of the costs of ownership that the provider could have included in capital-related costs had the provider legal title to the asset.

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(f) If a facility enters into a sale and leaseback agreement involving plant facilities or equipment on or after October 23, 1992, the amounts to be included in capital-related costs³ both on an annual basis and over the useful life of the asset shall not exceed the costs of ownership which shall be limited to depreciation and interest, and shall be determined as follows:

(1) If the annual rental or lease costs in the early years of the lease are less than the annual costs of ownership, but in the later years of the lease the annual rental or lease costs are more than the annual costs of ownership, in the years that the annual rental or lease costs are more than the annual costs of ownership, the facility may include in capital-related costs annually the actual amount of rental or lease costs, except that in any given year, the amount included in capital related costs is limited to an amount which would not cause the aggregate rental or lease costs included up to that year in capital-related costs to exceed the costs of ownership that would have been included in capital-related costs up to that year if the provider had retained legal title to the asset.

(2) If the annual rental or lease costs in the early years of the lease exceed the annual costs of ownership, but in the later years of the lease the annual rental or lease costs are less than the annual costs of ownership, the facility may carry forward amounts of rental or lease costs that were not included in capital-related costs in the early years of the lease due to the costs of ownership limitation, and include these amounts in capital-related costs in the years of the lease when the annual rental or lease costs are less than the annual costs of ownership, provided, however, in any given year the amount of actual annual rental or lease costs plus the amount carried forward to that year

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³ Included in rates of payment effective on and after October 23, 1993.

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may not exceed the amount of the costs of ownership for that year.

(3) In the aggregate, the amount of rental or lease costs included in capital-related costs may not exceed the amount of the costs of ownership that the provider could have included in capital-related costs if the provider had retained legal title to the asset.

(4) If a facility enters into a sale and leaseback agreement involving land, the incurred rental for the cost of land is not includable in allowable costs.

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Section 86-1.33 Hospital Closure/Conversion Incentive Programs.

(a) Hospital Closure Incentive Program. To reduce excess beds by ~~encouraging the closure of hospitals~~, the Commissioner of Health may consider proposals by hospitals which mutually agree that one or more of the hospitals in the group shall close. The plan must be approved by the appropriate health systems agency prior to submission to the Commissioner of Health. The variable costs associated with the closed facility or facilities (which include personnel costs) shall become part of the operating expenses of the remaining facilities in the group. The Commissioner of Health may consider a reasonable incentive structure for increased costs of the remaining facilities if coupled with a strict attrition program that would, within a reasonable period of time, assure a return to an appropriate level of staffing.

(b) Hospital Conversion Incentive Program. (1) To encourage hospitals to reduce excess acute care beds by substantially reducing the certified capacity or by converting a substantial number of such beds to a level of care for which the commissioner has determined a need exists, the commissioner may consider proposals by one or more hospitals which provide for the substantial reduction of acute care beds. Each facility undergoing conversion of beds must submit an individual proposal. The proposal must be reviewed by the appropriate health systems agency prior to submission to the commissioner. The variable costs associated with any layoffs at the converting facility may become part of the operating expenses of the converting facility or the other facilities which are the subject of the proposal. The commissioner may consider a reasonable incentive structure for increased costs of the converting facility or the other facilities if coupled with a strict attrition program that would, within a reasonable period of time, assure a return to an appropriate level of staffing.

(2) Paragraph (1) of this subdivision shall not apply in the case of a conversion caused by a determination under section 2806(6) of the Public Health Law, or where the commissioner finds that a conversion is entered into primarily to avoid the imposition of a utilization penalty.

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Section 86-1.34 Pilot reimbursement projects. (a) The Commissioner of Health may waive the requirements of this Subpart to ~~effect the development of additional knowledge and experience in different types of reimbursement mechanisms, contingent upon the approval of the United States Department of Health, Education and Welfare, and subject to the provisions of section 222(a) of the Social Security Act.~~

(b) Individual hospitals or groups of hospitals shall enter into such ventures with the understanding that the reimbursement received over the life of this pilot project shall be as defined in the experiment.

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Section 86-1.35 [Reserved]

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